

EXHIBIT G



August 7, 2017

VIA ELECTRONIC MAIL

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Re: *OFCCP v. Oracle America, Inc.*, Case No. 2017-OFC-00006,
Follow-Up Regarding OFCCP Document Requests

Dear Erin,

I write briefly to follow up on our call and your letter from this afternoon.

I. Certain Requests Implicating Production of Emails (RFP Nos. 17-18, 22, 24-25, 39-40, 42-45, 46)

- A. RFP No. 17 (Communications with Colleges and Universities)
RFP No. 18 (Communications with College Recruiters)
RFP No. 22 (Interview Notes)**

Oracle represented during our call today that, for the period between January 1, 2013 through June 30, 2014 ("Sample Period"), the sixteen custodians in College Recruiting (including Larry Lynn and Chantal Dumont) had 108,843 documents. During our call, we reached the following agreements:

- **RFP No. 17:** Oracle will produce documents responsive to RFP No. 17 from the Sample Period. Oracle will use as search terms the Internet domain names for the domestic colleges and universities identified in the College Recruiting Sourcing Handbook at ORACLE_HQCA_0000020127. Oracle stated that using such search terms yielded a set of 12,691 documents.
- **RFP No. 18:** Without using search terms, Oracle will review and produce a set of documents from the Sample Period that OFCCP will then use to propose search terms to be run against the entire Sample Period. Oracle agreed to produce such a set for a three-month period. OFCCP requests that the period span from August 1, 2013 through October 31, 2013.
- **RFP No. 22:** Oracle will produce documents responsive to RFP No. 22 from the Sample Period using the names of college applicants as search terms. The names

will be those contained in the spreadsheets (*i.e.*, 2013 COLLEGE APPS HIRES HQCA, 2014MY COLLEGE APPS HIRES HQCA) Oracle disclosed to OFCCP during the compliance evaluation. Oracle represented that using those names as search terms yields as a set of 9,995 document families, which consist of 27,719 documents total.¹

As discussed previously, following Oracle's production of documents from the Sample Period, OFCCP will meet and confer further with Oracle if the production of additional responsive documents is necessary.

- B. RFP No. 39 (Communications Related to Hiring Experienced Recruits)
RFP No. 40 (Communications Related to Hiring Transfer Employees)
RFP No. 42 (Interview Notes for Experienced Recruits)
RFP No. 43 (Interview Notes for Transfer Employees)
RFP No. 44 (Comm's. Regarding Decisions to Hire Experienced Recruits)
RFP No. 45 (Comm's. Regarding Decisions to Hire Transfer Employees):**

Oracle represented during our call today that, for the Sample Period, the thirty-eight custodians in Professional Recruiting had 89,280 documents. During our call, we reached the following agreements:

- **RFP Nos. 42-45:** Oracle will produced documents responsive to RFP Nos. 42-45 from the Sample Period using as search terms applicant names and requisition numbers. Applicant names and requisition numbers will not be used together in a search string. In other words, a document will be a hit if it has, from the relevant period, an applicant name or a requisition number.
- **RFP Nos. 39-40:** Without the use of search terms, Oracle will review and produce a set of documents from the Sample Period that OFCCP will then use to propose search terms to be run against the entire Sample Period. Oracle agreed to produce such a set for a three-month period. OFCCP requests that the period span from August 1, 2013 through October 31, 2013.

Like above, following Oracle's production of documents from the Sample Period, OFCCP will meet and confer further with Oracle if the production of additional responsive documents is necessary.

C. RFP Nos. 24 and 25 (Larry Lynn and Chantal Dumont Emails)

Without using search terms, Oracle will produce Mr. Lynn's responsive emails from the Sample Period. Oracle stated that Mr. Lynn has 7,887 emails from the Sample Period.

¹ Given the distinction Oracle made between document families and child documents for this request, OFCCP understands the other representations Oracle made regarding total numbers of documents to be the number of document families (*i.e.*, the number of parent documents, excluding child documents).

Oracle represented that Ms. Dumont has 41,385 emails from the Sample Period. The parties agreed to use the procedure to be used for RFP Nos. 18, 39, and 40 for Ms. Dumont's emails from the Sample Period. Based on that procedure, OFCCP requests that the three-month period for Ms. Dumont's initial set of emails span from November 1, 2013 through January 30, 2014.

As discussed previously, based on the production of these samples, OFCCP will then meet and confer with Oracle to discuss search terms to be used for the production of Mr. Lynn's and Ms. Dumont's remaining emails from July 1, 2014 through the present.

D. RFP No. 46: Joyce Westerdahl's Emails

Oracle accepted OFCCP's proposal to limit RFP No. 46, which OFCCP offered as a compromise in my August 4, 2017 letter. OFCCP's proposal did not entail sampling. However, during our call today, Oracle proposed producing Ms. Westerdahl's emails from the Sample Period as an initial set, without prejudice to OFCCP requesting additional emails at a later date. Oracle stated that Ms. Westerdahl had 2,291 emails from the Sample Period.

Based on the document count Oracle provided, OFCCP believes that the production of Ms. Westerdahl's emails from January 1, 2013 through January 17, 2017 does not require the use of search terms. Nevertheless, as a further compromise, OFCCP proposes that Oracle review and produce without the use of search terms Ms. Westerdahl's emails from January 1, 2013 through June 30, 2015. As with Mr. Lynn's and Ms. Dumont's emails, OFCCP will then meet and confer with Oracle to discuss search terms to be used for the production of Ms. Westerdahl's remaining emails.

Please advise as to whether Oracle accepts this final proposal.

Sincerely,

JANET M. HEROLD
Regional Solicitor

By:



MARC A. PILOTIN
Trial Attorney

EXHIBIT H



July 11, 2017

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Re: *OFCCP v. Oracle, Inc., et al.*, Case No. 2017-OFC-00006
Written Discovery Meet and Confer Letter

Dear Mr. Garcia:

I write in response to your June 28, 2017, and June 30, 2017 meet and confer letters that—in addition to misstating facts regarding Oracle’s discovery related positions, Oracle’s document production to date, and the parties’ agreements coming out of various meet and confer discussions—endeavors to unilaterally establish production deadlines that are not tethered to any understanding between the parties or the realities of the case.

Oracle has engaged in multiple meet and confer discussions in good faith, taking the lead in scheduling 15 hours of telephone conferences *at your request* to review your 92 requests in detail. As noted in your June 28, 2017, correspondence, I have written to you on several occasions dating back to May 24, again on June 1, and then again on June 9. In fact, in my correspondence, I told you that once we heard from you Oracle would serve amended and supplemental responses based on information gleaned from the meet and confer process and your responses. (We are serving them contemporaneously.) It is dilatory, to say the least, for you to state five weeks after the first letter and nearly three weeks after my last letter that “many of the points stated in these letters are inaccurate, incomplete, self-serving and repeatedly misstate what transpired during the meet and confer conferences.” Were my letters truly inaccurate I would have expected prompt correction as opposed to allowing a month to pass before addressing them.

To now say that Oracle’s positions are causing OFCCP prejudice by delaying production of documents is disingenuous at best. First, Oracle’s positions are and were merited given the

OHSUSA:767095923



Norman E. Garcia

July 11, 2017

Page 2

requests OFCCP propounded. Further, your own correspondence makes clear that OFCCP is the party that delayed moving things forward, as it took you over one month to craft two meet and confer letters. And your delay resulted in you making accelerated, unilateral demands that Oracle comply with OFCCP's demands over the course of the Fourth of July holiday weekend.

Your statement that all the critical documents in this case are in Oracle's possession truly mystifies. The NOV and the Amended Complaint both expressly state that, in its 18-month compliance review, OFCCP reviewed Oracle's employment policies, practices, records and data; interviewed employees; examined complaints; and analyzed data and other evidence. According to OFCCP, the foregoing evidence was sufficient to substantiate the findings in the NOV and to subsequently bring this action. Hence, by OFCCP's own account, the critical and necessary documents have long been in OFCCP's possession. The 92 Requests for Production ("RFPs") therefore largely seek information that is unnecessary and certainly not proportional to the needs of the litigation given the burden it would impose on Oracle where OFCCP already collected substantial amounts of material it contends establishes the alleged violations -- all of which was a necessary precursor to issuing the NOV and bringing this suit. Of course, from Oracle's perspective as defendant, all the critical documents in this case are in OFCCP's possession, yet OFCCP has failed to produce most of them and continues to refuse their production.

1. Oracle Has Been Aggressively Reviewing and Producing Documents on a Rolling Basis in Accordance With the Parties' Agreement.

Although you complain that Oracle has produced roughly 22,000 pages in response to OFCCP's discovery requests, you fail to acknowledge that the sum far exceeds that amount given our production of documents in native format—where an entire document receives only one bates stamp regardless of how many pages of which the document is comprised. Assuming you have looked at the native documents, surely you must agree that the true count of pages produced far exceeds the 22,000 unique bates numbers. Notably, after running and refining searches, Oracle has reviewed in excess of 65,500 documents (not pages), which further emphasizes that the requests are broad and not narrowly tailored in a way that facilitates easy collection and/or rubber stamping documents for production. Nor do you acknowledge that your delays in getting back to us on clarifications of your requests, as you agreed to, hampers the process.

OHSUSA-767095923



Norman E. Garcia

July 11, 2017

Page 3

Your suggestion that Oracle has rested on its laurels since you propounded discovery in February 2017 is belied by the record. Oracle has been hard at work collecting, reviewing, and producing documents while simultaneously producing *eight* 30(b)(6) witnesses in six different locations in response to an extremely broad deposition notice.¹ All of this occurred while Oracle worked tirelessly to prod OFCCP into providing meaningful responses to its discovery requests and producing more than OFCCP's own paltry production, which, as discussed in more detail below, largely consisted of simply re-producing to Oracle documents that Oracle provided to OFCCP in the first place.

In addition to ignoring that Oracle has produced far more than 22,000 pages of documents and eight 30(b)(6) witness, you also conveniently omit the fact that various motions affecting discovery were pending until recently. Merely stating that you propounded these RFPs in February and that Oracle has simply delayed is a misleading oversimplification of what has transpired over the past four months. Following you propounding the requests in February, much has happened that demonstrates Oracle's more than reasonable efforts to search for, gather, and produce responsive documents and its efforts to get clarification from you about the requests.

OFCCP propounded 29 requests for production on February 10, 2017, and 63 on February 21, 2017. Oracle provided timely responses and objections on March 7, 2017 and March 20, 2017, respectively. As an initial matter, OFCCP insisted that no protective order was warranted and refused entirely to negotiate one, and Oracle was not able to produce many confidential responsive documents without such an order. This issue was not resolved until the court issued a protective order on May 30 (close in proximity to the dates of my three meet and confer letters). The parties met and conferred and corresponded on this issue over 30 times before that date and exchanged more general meet and confer correspondence on March 27 (OFCCP), April 5 (Oracle), April 11 (OFCCP), April 14 (Oracle), April 18 (OFCCP), April 26 (Oracle), and April 28, 2017 (OFCCP). Despite the lack of a protective order, Oracle began producing documents

¹ In contrast, OFCCP objected to Oracle's 30(b)(6) topics and has refused to produce any witnesses to date.



Norman E. Garcia
July 11, 2017
Page 4

on May 25, 2017, immediately after the parties agreed on May 24, to abide by the most restrictive version of a protective order pending a ruling by the ALJ. Oracle followed its May 25 production with subsequent productions on June 2, June 12, June 23, and June 27, 2017. Oracle is still reviewing and producing documents on a rolling basis. Oracle's productions have been made in concurrence with multiple telephonic meet and confer conversations with OFCCP, which commenced on May 18, 2017 and continued on May 24, May 25, May 30, June 1, June 5, and June 6, 2017. On May 22, 2017, Oracle sent a letter discussing OFCCP's RFP No. 83 regarding employee contact information. OFCCP sent two responses to this letter on May 26. The parties also exchanged correspondence related to RFP Nos. 73-76 between June 12 and June 22, 2017. However, as discussed above, Oracle sent meet and confer letters on May 24, June 1, and June 9, and only after an unexplained period of silence lasting more than one month from Oracle's May 24 letter did OFCCP respond with its letters dated June 28 and June 30.

2. OFCCP's Production Has Been Woefully Inadequate.

Despite the evidence purportedly gathered and reviewed over 18 months, your letter also fails to acknowledge that Oracle has borne the burden of a vast investigation for collection and review of responsive documents. Indeed, OFCCP should have already been in possession of documents adequate to substantiate its claims but now seeks to have Oracle take on that burden primarily because OFCCP apparently failed to avail itself of the opportunity to review and obtain much of this information during the compliance review when it had broad on-site access. While Oracle has invested incredibly burdensome amounts of time, resources and money into responding to OFCCP's discovery, OFCCP has refused to reciprocate.

In contrast to Oracle, the vast majority of what OFCCP has produced is in fact content Oracle provided to OFCCP in the first place—to date OFCCP has only produced what appears to be only part of its investigatory file. Notably, materials authored by OFCCP or gained from sources other than Oracle appear in substantial part not to have not been produced. To suggest delay and insufficient effort on the part of Oracle, which has spent over \$1 million in fees and will spend millions more gathering, reviewing, and responding to OFCCP's broad requests while OFCCP's narrow production to date, defies logic.

OHSUSA:767095923

Norman E. Garcia

July 11, 2017

Page 5

3. OFCCP's Demand for an Accelerated Production Schedule after Ignoring Meet and Confer Letters for Over One Month is Bad Faith.

After going dark for over one month, from May 24 to June 28, not responding to even one of Oracle's three meet and confer letters, OFCCP finally responds to part of those letters after the close of business on June 28 by suggesting a "compromise" for a document production schedule that was set unilaterally, was never discussed at any meet and confer, and was delivered as a "take it or leave it" proposition. Indeed, OFCCP gave Oracle three business days to agree to the demanded schedule with the first scheduled production date falling just five business days later—on July 7.

These demands were made without addressing, as summarized in our May 24, June 1, and June 9 meet and confer letters, the list of areas where you agreed to clarify and/or modify responses. We requested in the letters that you get back to us so that we could move forward based on your information. To delay so long and then in the same breath demand that we suddenly adhere to this accelerated schedule, without addressing items you agreed to address, is unfair and in bad faith. Nevertheless, we have continued to review and produce documents on a rolling basis as promised. To be sure, Oracle has produced documents on almost a weekly basis, even during the OFCCP's unexplained period of radio-silence from May 24 to June 28. Oracle provided what it could in the absence of OFCCP's clarifications, producing documents on May 25, June 2, June 12, June 23, and June 27.

You misstate Oracle's position with regard to a production schedule. Oracle did not refuse to commit to a date for production of certain documents, but rather advised you that, given the breadth and massive nature of the material requested, it could not commit to completing its production by a date certain. Instead, we informed you that we would continue undertaking best efforts to produce documents as soon as possible on a rolling basis and would endeavor to produce all documents as soon as we could – until complete, but invariably may need produce through the cutoff. Such is the result of OFCCP's demands for Oracle to collect, review, and produce a massive amount of documents and data from myriad sources.



Norman E. Garcia

July 11, 2017

Page 6

We hope and intend to complete production well in advance of the cutoff, but at this juncture, we simply cannot commit to a schedule given that it remains unsettled what Oracle will be required to produce, and given that the volume of potentially responsive documents related to the relevant time period, while still unsettled, appears to have just tripled after Judge Larsen's initial ruling that the time frame is no longer an 18-month period, but is instead several years.

The schedule you put forth in your June 28 and June 30 letters is linked to, and builds in, an agreement to produce documents on a certain schedule, including production of those that Oracle disputes and/or those for which we seek clarification. Naturally, we cannot commit to the schedule you came up with, without even consulting us, but we are nevertheless amenable to discussing how to prioritize our review and production of documents.

In short, it would be improper and irresponsible for you to suggest to Judge Larsen that Oracle is engaging in a "leisurely" production schedule but if you do, we hope that you will be nothing less than transparent and share with him that when we endeavored to get clarification from you on your requests it took us over 15 hours to do so telephonically. And then, as a result of those discussions, we asked for written clarification or amendments to certain requests, and you have largely refused. We then hope you will share with him that you never consulted with us regarding your proposal other than demanding arbitrarily that we commit to a date certain to complete Oracle's production at a time when the requests needed clarification, the relevant time frame was unresolved, and that we told you that while we were not in a position to commit to a date in advance of the discovery cutoff, we were working to produce documents quickly and on a rolling basis. The way you describe these discussions in your June 28th letter is inaccurate and entirely misleading.

4. July 7 Production Demands: Oracle Employees Have a Constitutionally Protected Privacy Interest in Their Contact Information.

Contrary to your claims in the June 28 letter, the May 30 Protective Order did not moot Oracle's objection on privacy grounds to OFCCP's request for contact information for "all current and former employees in the PT1 job group and Product Development, Information Technology, and